

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

RECEIVED

AUG 26 1996

In the Matter of)
)
Rulemaking to Amend Part 64 of)
the Commission's Rules Governing)
Interstate Pay-Per-Call and Other)
Information Services Pursuant to the)
Telecommunications Act of 1996)

CC Docket No. 96-146

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

MCI COMMENTS

MCI Telecommunications Corporation (MCI), by its attorneys, hereby submits the following comments in response to the Commission's Order and Notice of Proposed Rule Making, FCC 96-289, CC Docket No. 96-146, adopted June 28, 1996 and released July 11, 1996 (Order/NPRM). In this Order/NPRM, the Commission amended Part 64 of its rules and also proposed "certain very limited modifications" to several existing rules in order to comply with the statutory mandate that its rules reflect the new requirements of the Telecommunications Act of 1996 (1996 Act) governing interstate pay-per-call and other information services.¹ These modifications pertain to the definition of "presubscription agreements," restrictions on the use of

¹ As noted in the Commission's Order/NPRM, "[p]ay-per-call services (also known as '900 services') offer telephone callers a variety of recorded and interactive information and entertainment programs that carry charges greater than, or in addition to, the charges for transmitting the call, and are available through 900 numbers. Within the context of Section 228 of the Communications Act [of 1934], information services encompass not only pay-per-call services but, also, information and entertainment programs available through other dialing sequences." Order/NPRM at footnote 1 (citations omitted).

No. of Copies rec'd 0211
List ABCDE

toll-free numbers, and billing requirements.²

BACKGROUND

The Commission first adopted regulations governing interstate pay-per-call services in 1991 to address complaints of widespread abuse involving 900 number services.³ Many of these complaints involved situations in which telephone subscribers were charged for information services accessed over 800 numbers, or other numbers widely understood by the general public to be toll-free. For purposes of expanding upon the Commission's regulatory framework, Congress enacted the Telephone Disclosure and Dispute Resolution Act (TDDRA),⁴ which required the Commission to adopt rules intended to increase customers' protection from fraudulent and deceptive practices and, also, to promote the development of legitimate pay-per-call services. The Commission subsequently adopted a Report and Order amending its pay-per-call regulations consistent with this statutory mandate.⁵

These substantial measures notwithstanding, some information providers (IPs) continued to seek to avoid pay-per-call regulation by taking advantage of certain exemptions to the

² MCI intends to review the comments filed by others and reserves the right to refine its positions herein based upon those comments.

³ Policies and Rules Concerning Interstate 900 Telecommunications Services, CC Docket No. 91-65, Report and Order, 6 FCC Rcd 6166 (1991), recon., 8 FCC Rcd 2343 (1993).

⁴ The Telephone Disclosure and Dispute Resolution Act of 1992, which added Section 228 to the Communications Act of 1934, Pub. L. No. 102-556, 106 Stat. 4181 (1992)(codified at 47 U.S.C. § 228).

⁵ Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Report and Order, CC Docket No. 93-22, 8 FCC Rcd 6885 (1993).

Commission's definition of pay-per-call under its rules. As a result, a significant number of telephone subscribers have complained of being inappropriately billed for calls made to information services available via 800 numbers. Against this backdrop of continued abuse, the Commission, by this Order, amended its rules to implement the 1996 Act's more stringent restrictions on the use of 800 and other toll-free numbers to charge customers for information services. In its NPRM, the Commission proposed very limited modifications to three sections of its regulations, and solicited comments thereon.

DISCUSSION

Specifically, in the above-captioned NPRM, the Commission is proposing several limited modifications to Sections 64.1501(b), 64.1504 and 64.1510 of its rules, for the purpose of foreclosing deceptive practices in connection with pay-per-call services. Those limited rule modifications, and MCI's comments thereon, are as follows:

Definition of "Presubscription" or Comparable Arrangement" (47 C.F.R. § 64.1501(b)).

The Commission proposes to revise its presubscription definition to include a requirement that all presubscription arrangements (and not just those involving toll-free service) be executed in writing or, alternatively, through payment by direct remittance, prepaid account, or debit, credit, charge or calling card, regardless of the telephone number used to access the relevant information service. The Commission also proposes to require that presubscription agreements be executed by a legally competent adult. To prevent deceptive use of presubscription agreements tied to contests or other promotions, the Commission further proposes to require that the presubscription document be separate or easily severable from any promotions or inducements. The Commission

also proposes to modify its definition of a presubscription agreement to require that a customer use a pre-existing credit, charge or calling card to obtain information services and that an actual card must have been delivered to the party to be billed prior to assessment of any charges. Additionally, such cards could not operate to assess charges through automatic number identification (ANI). Each of these proposed rule amendments appears reasonable and, based upon experiences occurring in the market place, likely to assist in the prevention of deceptive practices in connection with the provision of pay-per-call services. Accordingly, MCI supports these proposed amendments.

The Commission also solicited comments regarding whether safeguards should be required to ensure that electronically transmitted presubscription agreements are valid commercial instruments, and that electronic execution does not encourage the abuses that arose from oral execution of presubscription contracts. The Communications Act of 1934, as amended, 47 U.S.C. § 228 (c)(7)(C)(I), expressly recognizes as valid presubscription agreements transmitted through an electronic medium. This statute also mandates that electronically transmitted presubscription agreements must satisfy the same requirements as written agreements. The safeguards now in place to ensure that written presubscription agreements are valid also apply to electronically transmitted agreements. Accordingly, it does not appear that additional safeguards applicable to electronically transmitted presubscription agreements are required.

Restrictions on the Use of Toll-Free Numbers (47 C.F.R. § 64.1504). The Commission proposes to amend its rules to state explicitly that the relevant protections afforded a “calling party” apply also to “the subscriber to the originating line.” MCI concurs with this proposal, which should assure that a telephone subscriber will not be billed for information services

obtained by another individual who uses the subscriber's line to place calls to numbers widely understood to be toll-free.

Additionally, the Commission tentatively concluded that a carrier's billing of calls to an 800 or other toll-free number on the basis of ANI is a violation of Section 228(c)(7)(A) of the Communication's Act of 1934, unless the call involves the use of telecommunications devices for the deaf. MCI concurs, and notes that its tariff prohibits customers of its 800 service from using ANI, provided by MCI as an incident of its furnishing 800 service, to invoice, either directly or indirectly, their customers in connection with their furnishing of other than common carrier services. Placing such a restriction on all "customers," rather than merely on "carriers," prevents IPs from using third-party billers who, in turn, use ANI to invoice the customers of carriers. Accordingly, for the purpose of making its rules more effective, the Commission should adopt the aforementioned provisions regarding prohibitions on the use of ANI.

Billing and Collection of Pay-Per-Call and Similar Charges (47 C.F.R. § 64.1510). The Commission proposes to add language to this provision to state explicitly that charges for presubscribed information services accessed through a toll-free number must be displayed separately from those for local and long-distance telephone service. This proposed rule amendment appears reasonable and likely to prevent customer confusion regarding the distinction between telecommunications service charges and charges assessed for information services. MCI, however, submits that carriers should only be required to display charges for presubscribed information services accessed through toll-free numbers on a separate line, rather than on a separate page of the customer's bill. Displaying these charges on a separate page of a bill would be extremely costly to carriers. Such a requirement is also unnecessary because a separate line

display would clearly distinguish charges for information services from other local and long-distance charges.

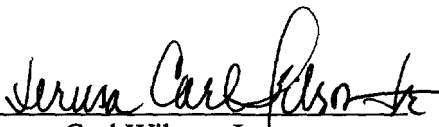
The Commission also tentatively concludes that, whenever a carrier charges a telephone subscriber for a call to an interstate information service, remuneration paid by that carrier to an entity providing or advertising the information service, or any reciprocal arrangement between such entities, constitutes per se evidence that the charge levied actually exceeds the charge for transmission. Accordingly, interstate service provided through such arrangements would fit within the Commission's pay-per-call definition and, thus, would be required to be offered exclusively through 900 numbers. MCI concurs with this rule modification and believes that it should be helpful in curbing marketplace abuses that have occurred in the recent past.

CONCLUSION

For the foregoing reasons, MCI respectfully requests that the Commission consider the above comments when fashioning amended rules in this proceeding.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORP.


Jerusa Carl Wilson, Jr.
Donald J. Elardo
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 887-2666

August 26, 1996

Its Attorneys

I, Sylvia Chukwuocha, hereby certify that a true copy of the foregoing "MCI COMMENTS" was served this 26th day of August, 1996, by hand-delivery or first-class mail, postage prepaid, upon each of the following persons:

Chairman Reed Hundt
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, DC 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, Dc 20554

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

ITS
Federal Communications Commission
1919 M Street, N.W.
Room 246
Washington, DC 20554


Sylvia Chukwuocha